Supreme Court, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

No. 79-1687

In re LEON W. KNIGHT, *et alia, Petitioners.*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

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IN THE

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OCTOBER TERM, 1979

No.

In re LEON W. KNIGHT, *et alia, Petitioners.*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

Petitioners Leon W. Knight, *et alia,* respectfully pray that this Court issue a writ of certiorari to review the opinion of the United States Court of Appeals for the Eighth Circuit rendered in these proceedings on 1 February 1980.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Eighth Circuit is unreported, and appears in Appendix A, *post* pp. 1a-2a. The order of the Court of Appeals denying Petitioners rehearing and rehearing en banc is unreported, and appears in Appendix B, *post* p. 3a. The order of the three-judge United States District Court for the District of Minnesota is unreported, and appears in Appendix C, *post* pp. 5a-7a.

JURISDICTION

The Court of Appeals filed its opinion on 1 February 1980, and denied Petitioners rehearing and rehearing en banc on 25 February 1980. Appendices A and B, *post* pp. 1a-2a, 3a. Petitioners' request for a writ of certiorari comes less than ninety (90) days from either of those dates. Petitioners invoke this Court's jurisdiction under 28 U.S.C. § 1254(1) (1976).

QUESTION PRESENTED

Did the three-judge District Court abuse its discretion and usurp power under Federal Rules of Civil Procedure 16, 26, 30, 34, and 37, and under the Fifth Amendment to the United States Constitution, when:

A. on 13 October 1978, it established a discovery-schedule, terminating Petitioners' discovery on 31 December 1978; and

B. after Petitioners moved on 30 December 1978 to re-open and extend discovery, it denied Petitioners' motion without either hearing or opinion, in the face of Petitioners' unrefuted showing that

1. material evidence exists in exclusive possession of certain corporations and private associations from whom Petitioners sought discovery;

2. officials and staff-personnel of those organizations testified falsely, evasively, or incompletely under oath in depositions;

3. the organizations and their attorneys wilfully withheld and destroyed evidence that Petitioners requested, and the District Court ordered, be produced;

4. record-evidence documenting the conspiracy to proffer false testimony and to suppress physical evidence became available only fifty two (52) or more days after the District Court promulgated its discovery-schedule on 13 October 1978; and

5. Petitioners filed their motion to reopen and extend discovery but twenty seven (27) days after they obtained the first record-evidence of the conspiracy, and only nine (9) days after they had complete record-evidence thereof?

CONSTITUTIONAL PROVISION AND FEDERAL RULES OF CIVIL PROCEDURE INVOLVED

This case involves the Fifth Amendment to the United States Constitution, and Federal Rules of Civil Procedure 16, 26, 30, 34, and 37.

The full text of these provisions appears in Appendix D, *post* pp. 9a-13a.

STATEMENT OF THE CASE

On 16 July 1979, Petitioners filed with this Court their Motion for Leave to File Petition for Extraordinary Writ, their Petition for Extraordinary Writ, and their supporting Appendices, praying that this Court issue a writ of mandamus commanding the three-judge United States District Court for the District of Minnesota convened in this case to grant Petitioners' motion in that court to re-open and extend discovery. *Knight* v. *Heaney,* No. 79-75 (U.S., filed 16 July 1979). Petitioners respectfully refer this Court

to the aforesaid Petition and Appendices for a complete and detailed statement of the case.

In summary, the record establishes that, during the course of discovery in the District Court from approximately February, 1977, through December, 1978, defendants National Education Association, Minnesota Education Association, Minnesota Community College Faculty Association, Independent Minnesota Political Action Committee for Education, and certain of their officials, staff-personnel, and attorneys [hereinafter collectively styled the "United Teaching Profession", or "UTP"] conspired to and did: (i) proffer false, evasive, and incomplete testimony under oath in depositions; (ii) sequester and destroy documentary evidence; and (iii) otherwise impede Petitioners' acquisition of evidence relevant to the federal constitutional and statutory claims Petitioners raise under 42 U.S.C. §§ 1983, 1985, and 1986 (1976) in the District Court.

During the course of this conspiracy, and before Petitioners had acquired record-evidence of the UTP's wrong-doing, the District Court held a pre-trial hearing on 13 October 1978, and ordered that Petitioners' discovery terminate on 31 December 1978. Subsequent to that hearing, Petitioners conducted further discovery, leading to full exposure of the conspiracy. However, record-evidence supporting any of Petitioners' charges did not become available until fifty two (52) or more days after the hearing of 13 October; and record-evidence fully substantiating Petitioners' allegations became available only after 22 December 1978, some nine (9) days before the termination of discovery. *See* Table, *post* pp. 6-7.

With complete evidence in hand, on 30 December 1978 Petitioners filed a motion in the District Court

to re-open and extend discovery. On 4 April 1979, the District Court denied Petitioners' motion—without hearing, findings, or opinion. Appendix C, *post* pp. 5a-7a.

Petitioners then sought the intervention of this Court by petition for extraordinary writ in the nature of mandamus. *Knight* v. *Heaney,* No. 79-75 (U.S., filed 16 July 1979). On 1 October 1979, this Court denied Petitioners leave to file their Petition for Extraordinary Writ. Appendix E, *post* p. 15a.

On 24 October 1979, Petitoners filed their petition *sub nomine* In re *Knight* in the United States Court of Appeals for the Eighth Circuit. The Court of Appeals heard oral argument on 17 January 1980, and filed its opinion denying Petitioners relief on 1 February 1980. Appendix A, *post* pp. 1a-2a. In that opinion, the Court of Appeals ruled that this case presented no extraordinary factual circumstances, and that Petitioners were not entitled to a writ of mandamus because: (i) the District Court had established a discovery-schedule; and (ii) Petitioners made only a "last minute objection to the cutoff time". On 11 February 1980, Petitioners requested rehearing and rehearing en banc from the Court of Appeals, which request that Court denied on 25 February 1980. Appendix B, *post* p. 3a.

Petitioners now re-invoke this Court's jurisdiction to review the Court of Appeals' holding that Federal Rules of Civil Procedure 16, 26, 30, 34, and 37, and the Fifth Amendment to the United States Constitution, permit a District Court to license civil litigants to testify falsely and evasively under oath, and to suppress and destroy documentary evidence.

TABLE

Conspirator-deponent and date of deposition	Source of evidence of false testimony and date evidence first adduced	Calendar days from 13 Oct. 1978 to receipt of transcript (Column 2) providing record-evidence of conspiracy	Calendar-days from receipt of transcript (Column 2) to 31 Dec. 1978
Chesebrough, 22-23 Feb. 1977	Zagrabelny, Dep'n on 17 Nov. 1978; Dep'n trn. rec'd on 8 Dec. 1978	56	23
Mammenga, 12-13 Jun. 1978	Zagrabelny, Dep'n on 17 Nov. 1978; Dep'n trn. rec'd on 8 Dec. 1978	56	23
Sands, 14 Jun. 1978	Zagrabelny, Dep'n on 17 Nov. 1978; Dep'n trn. rec'd on 8 Dec. 1978	56	23
Letorney, 24-25 Jul. 1978	Baker, Dep'n on 19-20 Oct. 1978; Dep'n trn. rec'd on 18 Dec. 1978 (Vol. 1), 31 Dec. 1978 (Vol. 2)	66 (Vol. 1) 79 (Vol. 2)	13 (Vol. 1) 0 (Vol. 2)
Johnson, 7-8 Sept. 1978	Zagrabelny, Dep'n on 17 Nov. 1978; Dep'n trn. rec'd on 8 Dec. 1978	56	23

McFarland, 17-18 Oct. 1978	Harman, Dep'n on 28 Nov. 1978; Dep'n trn. rec'd on 7 Dec. 1978	55	24 [27 after McFarland dep'n]
Baker, 19-20 Oct. 1978	Harman, Dep'n on 28 Nov. 1978; Dep'n trn. rec'd on 7 Dec. 1978	55	24
Bresin, 16 Nov. 1978	Saunders, Dep'n on 30 Nov. 1978; Dep'n trn. rec'd on 4 Dec. 1978	52	27
Vander Woude, 20 Nov. 1978	Saunders, Dep'n on 30 Nov. 1978; Dep'n trn. rec'd on 4 Dec. 1978	52	27
Harman, 28-29 Nov. 1978	Lowell, Dep'n on 6-8 Dec. 1978; Dep'n trn. rec'd on 22 Dec. 1978	70	9
Lowell, 6-8 Dec. 1978	Lowell, Dep'n on 6-8 Dec. 1978; Dep'n trn. rec'd on 22 Dec. 1978	70	9

REASONS FOR GRANTING THE WRIT

I. This case presents an extraordinary, shocking, and perhaps unique chronicle of wrongdoing by civil litigants intent on suppressing evidence of their illegal conduct by any means.

The petition and briefs originally filed with this Court in *Knight* v. *Heaney* contain all the legal authorities on which Petitioners and the UTP have relied heretofore. And neither the District Court nor the Court of Appeals referred to any other authorities in denying Petitioners' requests for relief from the UTP's conspiracy to obstruct justice in this case. Yet none of these authorities, all ultimately favorable to Petitioners, chronicles a conspiracy to "cover-up" material evidence as extensive and malevolent as Petitioners exposed in the courts below.

No other federal case that Petitioners, the UTP, and the lower courts here have gleaned from the reporting services has involved either: (i) the number of deponents—no less than eleven—that Petitioners established testified falsely under oath; or (ii) the masses of documentary evidence that Petitioners proved the UTP withheld from production, destroyed, or otherwise suppressed. No other federal case relied upon here has involved such blatant and unabashed admissions by deponents and their attorneys as the UTP's officials, staff-personnel, and counsel openly made on the record, boastfully acknowledging their suppression and destruction of documentary evidence and implicating each other in a web of lies proffered under oath. And no other federal case cited in this matter has involved the amazing discoveries of Petitioners' private investigator who, even while the UTP falsely denied its involvement in electoral politics in

Minnesota, exposed one of its paid staff-men operating a telephone-bank under an assumed name on behalf of a candidate for United States Senate from that State during the 1978 elections—and then learned from another UTP staff-man that these machinations resulted from the instructions of the UTP's attorneys as a direct result of the prosecution of this very case.

In sum, this case may well involve the most far-reaching and brazen "cover-up" of evidence yet recorded in civil litigation in the federal courts.

II. This case presents an unprecedented perversion of the Federal Rules of Civil Procedure that neither the District Court nor the Court of Appeals could rationalize.

In the face of Petitioners' unrefuted exposure of the UTP's "cover-up", the District Court was unable to articulate any reason whatsoever for denying Petitioners relief. *See* Appendix C, *post* pp. 5a-7a. And the Court of Appeals put forward only silence and nonsense in support of the District Court's action. *See* Appendix A, *post* pp. 1a-2a.

First, the Court of Appeals made no mention of the conspiracy Petitioners exposed—refraining even from identifying the UTP as a defendant below. Its opinion contains no denial of Petitioners' charges, no finding that Petitioners failed to prove those charges, and no determination that the UTP seriously challenged, let alone refuted, Petitioners' proofs. Neither did the Court of Appeals proffer even the ludicrous and feckless excuses that Petitioners' exposure of the "cover-up" is irrelevant to their request to re-open discovery, that the Federal Rules of Civil Procedure license "cover-ups" as proper pre-trial tactics, that federal

trial courts normally (or ever) have discretion to reward civil litigants for their false testimony and suppression of documentary evidence, or that federal appellate courts should not concern themselves with such matters. Following Wittgenstein's *dictum* that *"Wovon mann nicht sprechen kann, darube muss mann schweigen"*, the Court of Appeals consigned the embarassing facts of this case to oblivion.

Second, the Court of Appeals cited no statute, rule of court, judicial decision, legal treatise, or doctrine sanctioning false testimony given under oath, excusing the suppression and destruction of evidence, or sustaining the wilfull violation of court-orders to make discovery. Neither did the Court of Appeals outline any chain of reasoning, howsoever tortuous, leading from the uncontroverted fact of the conspiracy to the District Court's naked *fiat* that the UTP's malfeasance merits judicial protection and approval. Instead, it merely pretended that this case does not involve any extraordinary or exceptional circumstances, carefully avoiding reference to what actually transpired during discovery below.

Finally, the Court of Appeals berated Petitioners for their "last minute objection to the [discovery] cutoff time" established at the District Court's hearing of 13 October 1978. The Court of Appeals carefully neglected to note, however, that in every instance the record-evidence exposing the "cover-up" *post*-dates by at least fifty two (52) days the 13 October hearing. *See* Table, *ante*. Moreover, from the time they unmasked the first perjurer, Petitioners used in preparing their motion to re-open discovery only twenty seven (27) days after receipt of record-evidence in the relevant deposition-transcript. And, from the time

they brought the entire conspiracy to light, Petitioners used but nine (9) days after record-evidence in the last deposition-transcript became available.

In short, the sole faults the Court of Appeals could attribute to Petitioners—the *victims* of the "cover-up", not its perpetrators—were: (i) that Petitioners failed to predict on 13 October 1978 what they would discover fifty two (52) or more days thereafter; and (ii) that, having exposed the "cover-up" through their own diligence, Petitioners expended nine (9) calendar-days, including the 1978 Christmas holidays, to prepare and serve their motion to re-open discovery. The UTP carried out a "cover-up" in defiance of the Federal Rules of Civil Procedure for some twenty two (22) *months*—but, according to the Court of Appeals, Petitioners are entitled to no relief because they took nine (9) *days* after accumulating all the evidence to bring the matter to the District Court's attention! Even in one of Kafka's novels, this obvious white-washing of the UTP's conspiracy would appear strained and unreasonable. As the one and only prop for the decision of a federal appellate court, it is simply appalling.

III. This case presents a classic situation for intervention by writ of certiorari, in order to prevent irreparable injury to Petitioners and to preserve this Court's appellate jurisdiction over the constitutional issues Petitioners have raised below.

Without full discovery, Petitioners may be unable adequately to present their case at trial. If the UTP's "cover-up" does result in a judgment adverse to Petitioners, this Court on appeal will inevitably reverse and remand—not, however, for a new trial that could

accomplish nothing, but for further discovery to purge the case of the UTP's pre-trial wrong-doing. Whether that discovery succeeds, though, will depend upon the fortuitous availability of witnesses and the extent of their detailed recall of events that transpired years before, and upon the existence of documents that Petitioners have proven the UTP is now destroying or otherwise making unavailable. If its already exposed scheme of suppressing evidence portends future events, by the time discovery begins again on remand after appeal to this Court, the UTP will have perfected its "cover-up" and forever precluded Petitioners from collecting the evidence to which they are entitled.

Moreover, the UTP's lawlessness, as now condoned and rewarded by the District Court and the Court of Appeals, may foreclose immediate appellate review by this Court of the constitutional issues Petitioners raise below. In addition, even after this Court reverses a judgment against Petitioners. and remands for further discovery and a new trial, the lower-courts' actions may still defeat appellate review of the merits by affording the UTP sufficient time to consolidate its "cover-up" through destruction of documents and coaching of witnesses.

CONCLUSION

Material evidence exists within the exclusive control of the UTP. Throughout the course of this litigation below, however, the organization and its agents have illegally withheld or falsified much of this evidence. And although Petitioners have exposed the UTP's wrong-doing, the District Court and the Court of Appeals have sanctioned its malfeasance anyway. This

result self-evidently offends the Federal Rules of Civil Procedure and the Fifth Amendment to the United States Constitution. Furthermore, unless reversed, it will irreparably injure Petitioners, will defeat this Court's appellate jurisdiction over the constitutional merits of this case, and will encourage wholesale disregard of the federal discovery-rules by every civil litigant with something to hide and the temerity to hide it.

For these reasons, this Court should issue a writ of certiorari to the United States Court of Appeals for the Eighth Circuit.

Respectfully submitted,

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Attorney for Petitioners

25 April 1980

APPENDICES

APPENDIX A

Opinion of the United States Court of Appeals for the Eighth Circuit (1 Feb. 1980)

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 79-1910

IN RE: LEON W. KNIGHT, ET AL., *Petitioners.*

Petition for Writ of Mandamus Directed to the United States District Court for the District of Minnesota

Submitted: January 17, 1980

Filed: February 1, 1980

Before GIBSON, Senior Circuit Judge, and ROSS and HENLEY, Circuit Judges.

PER CURIAM.

Petitioners, Leon W. Knight, *et al.*, petition this court to issue an extraordinary writ in the nature of mandamus to compel the three-judge district court to reopen discovery. We deny the petition.

Petitioners are twenty faculty members of the Minnesota community colleges who, by and with the assistance of the National Right to Work Legal Defense Foundation, filed a lawsuit in 1974 challenging the constitutionality of public sector collective bargaining in Minnesota. In 1976, the United States Court of Appeals for the Eighth Circuit ordered the convening of a three-judge court to consider the allegations and the Honorable Gerald W. Heaney, circuit judge, and the Honorable Earl R. Larson and Donald D. Alsop, district judges, were impaneled to constitute that court. This three-judge court, through Judge Alsop, periodically communicated with the parties to monitor the progress of the case; and in September of 1978, scheduled a pretrial hearing for October of that year. At this hearing, the court discussed the current status of discovery and subsequently ordered a discovery deadline of

December 31, 1978. This date was approximately two and one-half years since the convening of the three-judge court and was specifically approved in statements made by petitioners' counsel that they would have no difficulty completing discovery by mid-December 1978. Petitioners conducted discovery both before and after the October hearing without any complaints to the district court concerning recalcitrant witnesses, answers to interrogatories or cooperation of counsel of any sort. On December 30, one day before the deadline, they moved for rescission of the December 31 deadline and requested sanctions. Petitioners' motion was denied after a hearing.

The remedy of mandamus has been described by the Supreme Court as a drastic one, to be invoked only in extraordinary situations. *Kerr v. United States District Court,* 426 U.S. 394, 402 (1976). In fact, "only exceptional circumstances amounting to a judicial 'usurpation of power' " is said to justify the invocation of this extraordinary remedy. *Id.* Additionally, the issuance of such writ is in large part a matter of discretion with the court to which the petition is addressed. *Id.* at 403. Mandamus, as an extraordinary writ, is only rarely available to interfere with the district court's processing of its cases. This is not such a case.

In light of these guidelines and in consideration of the length of discovery formally agreed to by the petitioners and the last minute objection to the cutoff time, we cannot say the district court abused its discretion in not extending discovery.

Petition denied.

A true copy.

Attest:

CLERK, U.S. COURT OF APPEALS, EIGHTH CIRCUIT.

APPENDIX B

Order of the United States Court of Appeals for the Eighth Circuit (25 Feb. 1980)

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

September Term, 1979

79-1910

IN RE: LEON W. KNIGHT, ET AL., *Petitioners.*

ORDER

The Court having considered petition for rehearing en banc filed by counsel for petitioners and, being fully advised in the premises, it is ordered that the petition for rehearing en banc be, and it is hereby, denied.

Considering the petition for rehearing en banc as a petition for rehearing, it is ordered that the petition for rehearing also be, and it is hereby, denied.

February 25, 1980

APPENDIX C

Order of the United States District Court for the District of Minnesota (4 Apr. 1979)*

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* Portions of this Order not relevant to the Petition for A Writ of Certiorari have been excised.

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

4-74 Civ. 659

LEON W. KNIGHT, *et al., Plaintiffs,*

v.

MINNESOTA COMMUNITY COLLEGE FACULTY ASSOCIATION, *et al.,*

Defendants.

ORDER

This matter comes before the court upon the following motions:

1. A motion of the plaintiffs for an order rescinding this court's order of October 13, 1978 (sic October 16, 1978) and entering an order commanding the production of certain files maintained by, the depositions of certain staff personnel of, and the payment of certain costs and fees by defendants National Education Association, Minnesota Education Association, Minnesota Community College Faculty Association, and Independent Minnesota Political Action Committee for Education.

* * * *

The court having met and considered the matter, and upon all files, records and proceedings herein,

IT IS ORDERED That the motion of the plaintiffs as hereinabove set forth be and the same hereby is in all things denied.

* * * *

IT IS FURTHER ORDERED:

1. On or before May 7, 1979 each of the parties hereto shall, by and through their counsel and if necessary by

their personal presence, meet, prepare, and enter into a stipulation of undisputed facts. Such stipulation shall set forth, seriatim, such facts as are undisputed or about which there is no genuine issue, without regard to the relevancy thereof. If the court finds that any party to the action has failed to reasonably comply with the terms of this order, it shall invoke the sanctions of Rule 37 of the Federal Rules of Civil Procedure, together with such other sanctions as are available to it.

2. On or before May 21, 1979, counsel for each party shall prepare, file and serve upon opposing counsel a statement setting forth all facts in issue which remain unresolved and which it proposes to submit to the court for determination.

3. On or before June 4, 1979, counsel for each party shall prepare, serve and file a schedule of all exhibits which will be offered in evidence at the trial as part of its case in chief.

4. On or before June 4, 1979, counsel for each party shall mark for identification in the sequence proposed to be offered all exhibits intended to be offered at trial.

5. On or before June 4, 1979, counsel for each party shall prepare, serve and file a schedule of depositions or portions thereof it proposes to offer in evidence.

6. On or before June 4, 1979, counsel for each party shall prepare, serve and file a schedule of interrogatories and answers to interrogatories that it proposes to offer in evidence.

7. On or before June 4, 1979, counsel for each party shall prepare, serve and file a full and complete statement of the facts it proposes to prove as part of its case in chief, setting forth such facts in separately numbered para-

(a) references to stipulations, depositions, or responses to Interrogatories, by page and number, as to each such fact;

(b) the name and address of each witness who might be called to testify and a brief summary of the substance of the testimony of each such witness.

8. On or before June 18, 1979, each party shall file a detailed written brief setting forth separately the legal issues for determination by this court, the relief sought by the plaintiffs, the defenses, including affirmative defenses of the defendants to plaintiffs' claims, and a precise statement of the legal contentions of the party filing the brief with identification of the authorities claimed to support such positions. Such briefs shall not exceed fifty (50) pages in length.

IT IS FINALLY ORDERED That a further hearing herein be conducted by the court on the 29th day of June, 1979, at 9:30 a.m. at the Federal Courts Building in St. Paul, Minnesota.

DATED: April 4, 1979.

/s/ GERALD W. HEANEY
Gerald W. Heaney
United States Circuit Judge

/s/ EARL R. LARSON
Earl R. Larson
United States District Judge

/s/ DONALD D. ALSOP
Donald D. Alsop
United States District Judge

APPENDIX D

Fifth Amendment to the United States Constitution and Federal Rules of Civil Procedure 16, 26, 30, 34, and 37

United States Constitution Amendment V

* * * nor shall any person * * * be deprived of life, liberty, or property, without due process of law * * *.

Federal Rule of Civil Procedure 16

RULE 16. PRE-TRIAL PROCEDURE; FORMULATING ISSUES.

In any action, the court may in its discretion direct the attorneys for the parties to appear before it for a conference to consider

(1) The simplification of the issues;

(2) The necessity or desirability of amendments to the pleadings;

(3) The possibility of obtaining admissions of fact and of documents which will avoid unnecessary proof;

(4) The limitation of the number of expert witnesses;

(5) The advisability of a preliminary reference of issues to a master for findings to be used as evidence when the trial is to be by jury;

(6) Such other matters as may aid in the disposition of the action.

The court shall make an order which recites the action taken at the conference, the amendments allowed to the pleadings, and the agreements made by the parties as to any of the matters considered, and which limits the issues for trial to those not disposed of by admissions or agreements of counsel; and such order when entered controls the subsequent course of the action, unless modified at the trial to prevent manifest injustice. The court in its discretion may establish by rule a pre-trial calendar on which actions may be placed for consideration as above provided

and may either confine the calendar to jury actions or to non-jury actions or extend it to all actions.

Federal Rule of Civil Procedure 26

RULE 26. GENERAL PROVISIONS GOVERNING DISCOVERY.

(a) DISCOVERY METHODS. Parties may obtain discovery by one or more of the following methods: depositions upon oral examination or written questions; * * * production of documents or things or permission to enter upon land or other property, for inspection and other purposes; * * * and requests for admission. Unless the court orders otherwise under subdivision (c) of this rule, the frequency of use of these methods is not limited.

(b) SCOPE OF DISCOVERY. Unless otherwise limited by order of the court in accordance with these rules, the scope of discovery is as follows:

> (1) *In General.* Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.
>
> * * * *

(c) PROTECTIVE ORDERS. Upon motion by a party or by the person from whom discovery is sought, and for good cause shown, the court in which the action is pending * * * may make any order which justice requires to protect a

party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following: (1) that the discovery not be had; * * * (4) that certain matters not be inquired into, or that the scope of the discovery be limited to certain matters * * *.

Federal Rule of Civil Procedure 30

RULE 30. DEPOSITIONS UPON ORAL EXAMINATION.

(a) WHEN DEPOSITIONS MAY BE TAKEN. After commencement of the action, any party may take the testimony of any person, including a party, by deposition upon oral examination. Leave of court, granted with or without notice, must be obtained only if the plaintiff seeks to take a deposition prior to the expiration of 30 days after service of the summons and complaint upon any defendant or service made under Rule 4(e) * * *.

* * * *

(d) MOTION TO TERMINATE OR LIMIT EXAMINATION. At any time during the taking of the deposition, on motion of a party or of the deponent and upon a showing that the examination is being conducted in bad faith or in such manner as unreasonably to annoy, embarrass, or oppress the deponent or party, the court in which the action is pending or the court in the district where the deposition is being taken may order the officer conducting the examination to cease forthwith from taking the deposition, or may limit the scope and manner of the taking of the deposition as provided in Rule 26(c). If the order made terminates the examination, it shall be resumed thereafter only upon the order of the court in which the action is pending. Upon demand of the objecting party or deponent, the taking of the deposition shall be suspended for the time necessary to make a motion for an order. The provisions of Rule 37(a)(4) apply to the award of expenses incurred in relation to the motion.

* * * *

Federal Rule of Civil Procedure 34

RULE 34. PRODUCTION OF DOCUMENTS AND THINGS AND ENTRY UPON LAND FOR INSPECTION AND OTHER PURPOSES

(a) SCOPE. Any party may serve on any other party a request (1) to produce and permit the party making the request, or someone acting on his behalf, to inspect and copy, any designated documents (including writings, drawings, graphs, charts, photographs, phonorecords, and other data compilations from which information can be obtained, translated, if necessary, by the respondent through detection devices into reasonably usable form), or to inspect and copy, test, or sample any tangible things which constitute or contain matters within the scope of Rule 26(b) and which are in the possession, custody or control of the party upon whom the request is served * * *.

(b) PROCEDURE. The request may, without leave of court, be served upon the plaintiff after commencement of the action and upon any other party with or after service of the summons and complaint upon that party. The request shall set forth the items to be inspected either by individual item or by category, and describe each item and category with reasonable particularity. The request shall specify a reasonable time, place, and manner of making the inspection and performing the related acts. * * * The party submitting the request may move for an order under Rule 37(a) with respect to any objection to or other failure to respond to the request or any part thereof, or any failure to permit inspection as requested.

Federal Rule of Civil Procedure 37

RULE 37. FAILURE TO MAKE DISCOVERY: SANCTIONS.

(a) MOTION FOR ORDER COMPELLING DISCOVERY. A party, upon reasonable notice to other parties and all persons

affected thereby, may apply for an order compelling discovery as follows:

(1) *Appropriate Court.* An application for an order to a party may be made to the court in which the action is pending, or, on matters relating to a deposition, to the court in the district where the deposition is being taken. An application for an order to a deponent who is not a party shall be made to the court in the district where the deposition is being taken.

(2) *Motion.* If a deponent fails to answer a question propounded or submitted under Rules 30 * * *, or if a party, in response to a request for inspection submitted under Rule 34, fails to respond that inspection will be permitted as requested or fails to permit inspection as requested, the discovering party may move for an order compelling an answer, or a designation, or an order compelling inspection in accordance with the request. * * *

(3) *Evasive or Incomplete Answer.* For purposes of this subdivision an evasive or incomplete answer is to be treated as a failure to answer.

(4) *Award of Expenses of Motion.* If the motion is granted, the court shall, after opportunity for hearing, require the party or deponent whose conduct necessitated the motion or the party or attorney advising such conduct or both of them to pay to the moving party the reasonable expenses incurred in obtaining the order, including attorney's fees, unless the court finds that the opposition to the motion was substantially justified or that other circumstances make an award of expenses unjust. * * *

APPENDIX E

Order of the United States Supreme Court (1 Oct. 1979)

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, D.C. 20543

October 1, 1979

Edwin Vieira, Jr., Esq.
12408 Greenhill Drive
Silver Spring, MD 20904

RE: Leon W. Knight, et al.
v. Gerald W. Heaney, United States
Circuit Judge, et al.
No. 79-75

Dear Mr. Vieira:

The Court today entered the following order in the above-entitled case:

The motion for leave to file a petition for a writ of mandamus and/or prohibition is denied.

Very truly yours,

/s/ MICHAEL RODAK, JR., Clerk
Michael Rodak, Jr.

CERTIFICATE OF SERVICE

I hereby certify that, pursuant to Rule 33(1) of the Rules of this Court, I have served three (3) copies of Petitioners' Petition for a Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit on each of the following, by mailing said copies to the addresses listed below, first-class postage-prepaid priority mail.

The Honorable Floyd R. Gibson
The Honorable Donald R. Ross
The Honorable J. Smith Henley
c/o Mr. Robert D. St. Vrain,
Clerk
United States Court of Appeals
for the Eighth Circuit
St. Louis, Missouri 63101

The Honorable Gerald W. Heaney
The Honorable Earl R. Larson
The Honorable Donald D. Alsop
c/o Mr. Gerald Berquist,
Chief Deputy Clerk
United States District Court
514 United States Court House
Minneapolis, Minnesota 55401

Barbara Lindsey Sims, Esq.
Special Assistant Attorney General
515 Transportation Building
St. Paul, Minnesota 55155

Donald J. Mueting, Esq.
Special Assistant Attorney General
515 Transportation Building
St. Paul, Minnesota 55155

Eric Miller, Esq.
Oppenheimer, Wolff, Foster,
Shepard and Donnelly
1700 First National Bank Building
St. Paul, Minnesota 55101

EDWIN VIEIRA, JR.
12408 Greenhill Drive
Silver Spring, Maryland 20904
301-622-2804

Attorney for Petitioners

Done this twenty-fifth day of April, 1980.